

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

HUSSEIN S. HUSSEIN,

Plaintiff,

vs.

ADEL ERSEK, et al.,

Defendants.

3:07-CV-0056-LRH (VPC)

**ORDER**

Plaintiff filed a document styled as “emergency motion for an order reviewing defense counsel’s conduct, for sanctions, for setting an evidentiary hearing to identify ghost writers participating in the fraudulent and/or improper conduct in this case, and for allowing plaintiff to complete his discovery by re-deposing the defendants in person and the witnesses under complete supervision of this court after compelling the production of documents and the responses to the subpoenas and the written discovery sought by plaintiff from defendants, the University of Nevada, Reno, and Sierra Biomedical Research Corporation” (#127). This court stayed further briefing of plaintiff’s motion until further order of this court (#131) pursuant to Local Rule IA 3-1. The court has reviewed plaintiff’s motion and enters this order without further briefing,

**I. Procedural History**

On February 2, 2007, plaintiff filed his complaint (#1), which he amended on May 14, 2007 (#6). The court approved the first discovery plan and scheduling order in this action on June 14, 2007, six months after the filing of the original complaint, and the discovery cutoff was December 6, 2007 (#12). The court granted plaintiff an extension of time to serve defendant Laslo under the Hague Convention on June 29, 2007 (#13), and thereafter granted an extension of the discovery plan and scheduling order, which required discovery to be completed by February 6, 2008, over one year after the filing of the original complaint (#18).

1 On February 26, 2008, this court granted a second extension of the discovery plan and scheduling  
2 order, which required discovery to be completed by April 7, 2008 (#37). On March 25, 2008, the court  
3 held a hearing and granted defendants' motion for protective order to prohibit depositions of the named  
4 defendants in this case until the District Court decided the dispositive motions pending in Hussein 1 and  
5 2 (#40). The court agreed with defendants that the outcome of those motions might dispose of or limit  
6 additional discovery in this action and stayed discovery pending the outcome of the Hussein 1 and 2  
7 dispositive motions. *Id.* Counsel were ordered to file a notice with this court within ten days of the  
8 issuance of the District Court's order in Hussein 1 and 2 so that a case management conference could  
9 be scheduled. *Id.*

10 Although the District Court in Hussein 1 and 2 initially denied defendants' motions for summary  
11 judgment, the court vacated that order for the limited purpose of reconsidering certain issues, and set a  
12 briefing schedule to be complete completed by May 16, 2008 (#43). On June 12, 2008, the District  
13 Court granted summary judgment to defendants as to all claims and as to all defendants in Hussein 1 and  
14 2 (#45). Defendants acknowledged that apart from initial disclosures, no discovery had been conducted  
15 in this action, and further advised of their intention to file a dispositive motion in this action based in  
16 part on the ruling in Hussein 1 and 2. *Id.*

17 On July 7, 2008, this court held a case management conference in this action and directed  
18 defendants to file their dispositive motion no later than August 1, 2008 (#48). The parties were ordered  
19 to meet and confer during the week of August 3, 2008 to determine what discovery was necessary in this  
20 action and to then file a stipulation regarding that discovery no later than August 8, 2008. The court  
21 stayed discovery with the exception of its direction to counsel to meet, confer, and propose a discovery  
22 schedule. *Id.*

23 On August 1, 2008, defendants filed a motion for judgment on the pleadings; thereafter, the  
24 parties submitted a stipulation to stay discovery until disposition of this motion, which the court  
25 approved (#54). The court also ordered the parties to file a status report within fifteen days of the  
26 decision on the dispositive motion concerning a discovery plan. *Id.* On March 6, 2009, the District  
27 Court issued its order granting in part and denying in part defendants' motion for judgment on the  
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1 pleadings (#68). On April 1, 2009, this court issued its order providing that discovery would close by  
2 September 2, 2009, with dispositive motions due October 2, 2009, and stated that no further extensions  
3 would be granted (#70).

4 Several weeks later, the parties submitted a stipulation to extend discovery on the ground that  
5 defendants' counsel, Mr. Hilsabeck, had been seriously injured in a motorcycle accident (#72). On June  
6 8, 2009, the court held a hearing and reviewed with counsel in detail the chronology of this case and the  
7 court's concern that discovery must be completed so the case could proceed. Counsel for the parties  
8 represented to the court that the facts of this case had largely been covered in Hussein 1 and 2, but that  
9 depositions of defendants Laslo and Ersek needed to be taken (#74). These defendants reside in  
10 Romania and England; therefore, the court directed defendants' counsel to arrange these depositions  
11 immediately. *Id.* The court entered a final order regarding discovery and a deadline of November 2,  
12 2009, with dispositive motions due on December 2, 2009. *Id.* As of June 8, 2009, this case had been  
13 pending for well over two years.

14 In July 2009, only weeks after the court set these final scheduling deadlines, plaintiff's counsel  
15 sought to withdraw. A flurry of motions and notices followed, which culminated in a September 15,  
16 2009 hearing (#96). The court granted plaintiff's counsel's motion to withdraw and granted defendants'  
17 motion for protective order. *Id.* The court ordered that plaintiff's deposition would proceed as noticed  
18 on September 16, 2009, and that the telephonic depositions of defendants Ersek and Laslo would  
19 proceed as scheduled on September 17, and 18, 2009. The court further ordered plaintiff and  
20 defendants' counsel to meet and confer to discuss discovery to be completed by November 2, 2009, and  
21 set a case management hearing for October 2009. *Id.*

22 The court also advised defendants' counsel and plaintiff as follows:

23 The Court reminds plaintiff that even though he is representing himself  
24 in this action in pro se, he is subject to Rule 11 of the Federal Rules of  
25 Civil Procedure and also subject to the Court's inherent power to sanction  
26 misconduct by parties or attorneys who appear before the Court.

27 The parties are noticed that this Court will not tolerate litigation tactics  
28 that include the following: bad faith, filing vexatious pleadings; abuse of  
the judicial process; tactics that are designed to delay or disrupt litigation;  
tactics that are engaged in for an improper purpose, such as to harass; and

1 tactics or papers that may misrepresent statements of law or fact. The  
2 Court advises the plaintiff it is not interested in this Court becoming a  
venue for anything but the efficient management of this case.

3 The parties are further advised that if the Court determines that either  
4 party is engaging in conduct in violation of Rule 11 or is sanctionable, the  
5 Court will put an immediate stop to such conduct and implement a  
6 protocol which will allow the opposing side to file an immediate paper  
7 requesting an emergency hearing for a status conference to determine  
whether such conduct or such filing is sanctionable under Rule 11, is  
filed for an improper purpose, or has already been litigated to determine  
if such paper shall be stricken, or the Court may use its inherent power to  
impose sanctions.

8 Subsequently, plaintiff was given leave to re-depose defendants Ersek and Laslo under court  
9 supervision, which he did (###s 132 & 133). Defendants' counsel also provided plaintiff with a notice  
10 of availability of depositions for twelve additional witnesses (#104). Discovery concluded, and  
11 defendants filed a motion for summary judgment on December 2, 2009 (#144).

## 12 **II. Discussion and Analysis**

13 By his motion, plaintiff generally seeks sanctions against defendants' counsel and also asks the  
14 court to re-open discovery. Since the filing of the motion in October 2009, the court allowed plaintiff  
15 to re-depose defendants Ersek and Laslo under this court's supervision, and the court also ruled on other  
16 discovery requests, which render those matters moot.

17 Turning to the matter of sanctions, plaintiff asks this court to issue sanctions based on eight  
18 categories of conduct.

### 19 **A. Improper Discovery**

20 Plaintiff contends that defendants' counsel posed improper questions at plaintiff's deposition and  
21 in written discovery requests. The record before the court indicates that plaintiff refused to answer  
22 deposition question he found improper, and he also responded with objections to written discovery,  
23 which he characterizes as abusive. Defendants did not move to compel plaintiff to answer deposition  
24 questions, nor did they ask the court to overrule plaintiff's written objections. In other words, plaintiff  
25 objected to certain discovery and that was the end of it. While parties to litigation often resist discovery  
26 on the grounds that it is improper or abusive, if the requesting party accepts those responses and does  
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1 not pursue the matter further, the dispute is over, and the court's intervention is not required. Frustration  
2 over questions to which a party objects, standing alone, is no basis for sanctions.

3 **B. Telephonic Depositions**

4 Plaintiff objects to the telephonic depositions of defendants Ersek and Laslo, who reside in  
5 England and Romania, respectively, because he could not observe their demeanors, had difficulty  
6 questioning them about exhibits, and so on. The court has three observations. First, at the March 25,  
7 2008 case management conference, plaintiff's former counsel acknowledged that if plaintiff wished to  
8 depose the defendants in person, he would have to bear that cost, and he recognized that defendants'  
9 telephonic or video depositions made economic sense. Second, at the June 8, 2009, hearing when  
10 defendants sought a final extension of discovery due to Mr. Hilsabeck's injuries, the court admonished  
11 defendants' counsel to immediately begin making arrangements for these two depositions. If plaintiff  
12 wished to depose the defendants in England and Romania, or to videotape the depositions, he could have  
13 made those arrangements. Finally, plaintiff was given leave to re-depose the defendants under court  
14 supervision on November 3, 2009, in response to his claim that defendants' counsel coached the  
15 defendants and that he did not have adequate time to question them.

16 **C. Witness Coaching**

17 Plaintiff asserts that defendants' counsel "coached" the defendants and other witnesses, which  
18 rendered their deposition testimony a waste of time. According to plaintiff, statements by defendants'  
19 counsel such as, "Go ahead and answer if you know," or "Go ahead and answer if you remember," are  
20 improper. In addition, witnesses testified they could not answer questions with the document at issue  
21 before them. What plaintiff describes is not atypical or sanctionable conduct. An attorney can so advise  
22 a client or a witness along these lines, and if this conduct rises to a level the questioner considers an  
23 abusive or unfair, the court can be contacted or the deposition can be halted to allow the aggrieved party  
24 to seek relief from the court. Plaintiff did not do so.

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**D. Manufacturing Evidence**

Plaintiff makes the very serious allegation that defendants' counsel prepared false affidavits of various witnesses, and offers citations to plaintiff's papers filed in this and other Hussein cases as proof. The offer of proof is insufficient and the claim is meritless.

**E. False Objections to Conceal Evidence**

Plaintiff accuses defendants' counsel of making false assertions that plaintiff addressed with evidence in plaintiff's papers. Plaintiff does not tell the court what the allegedly false assertions are, and it is not the court's responsibility to sift through thousands of pages of papers to ferret out plaintiff's complaint.

**F. Lies about the Pending Claims in the Case**

Plaintiff's position is that some or all of his claims are still pending, notwithstanding the District Court's order granting in part and denying in part defendants' motion for judgment on the pleadings (#68). Defendants' view is that the only claims that survived the District Court's order are plaintiff's defamation claims. Plaintiff considers defendants' adherence to this view to be sanctionable. The court disagrees. Parties to litigation may disagree about the meaning of an order, and their recourse is simple: seek clarification from the court who issued the order.

**G. Buying Witnesses**

Next, plaintiff contends that defendants' counsel has bought witnesses and asks to submit *in camera* this conduct. The court does not find this accusation credible on its face and will not allow the court to be manipulated to allow plaintiff to continue this attack on those he considers his adversaries.

**H. Misuse of Court's Order**

As noted earlier, this court admonished counsel and plaintiff on September 15, 2009 that it would not tolerate abusive litigation tactics (#96). Plaintiff accuses defendants' counsel of misusing the court's order to cast plaintiff in an unfavorable light with another District Court. The court not only does not find reference to its order sanctionable; it is patently clear to this court that plaintiff ignored this court's admonition through the filing of numerous motions that are vexatious, an abuse of the judicial process, designed to delay or disrupt litigation, and intended for an improper purpose, such as to harass

1 the opposing party. This is precisely what plaintiff has done since he commenced representing himself  
2 in *pro se*.

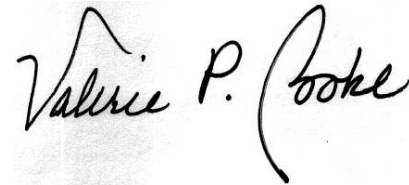
3 **III. Conclusion**

4 Having reviewed plaintiff's motion, the court finds there is no basis under the law or the facts  
5 to support his claims that defendants' counsel engaged in sanctionable conduct. It is evident that  
6 plaintiff ignored the court's admonition at the September 15, 2009 hearing. The court stayed briefing  
7 on this motion because it is also evident that plaintiff continues to file frivolous motions for an improper  
8 purpose; that is, to vex and harass defendants and needlessly multiply these proceedings. The court will  
9 not be a party to such tactics.

10 Plaintiff's motion for sanctions (#127) is **DENIED**.

11 **IT IS SO ORDERED.**

12 Dated this 8th day of January, 2010.

A handwritten signature in black ink, reading "Valerie P. Cooke". The signature is written in a cursive, flowing style. The first name "Valerie" is written in a larger, more prominent script, followed by "P." and "Cooke". The signature is positioned to the right of the date line.

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14 UNITED STATES MAGISTRATE JUDGE  
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